

# *EXHIBIT 2*

*UNREDACTED VERSION  
OF DOCUMENT  
SOUGHT TO BE SEALED*

# *EXHIBIT 2*

2714429AMG.txt

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09:34:28 3 THE VIDEOGRAPHER: Good morning. We are  
09:34:29 4 going on the record at 9:34, on September 22 of the  
09:34:35 5 Year 2017. Please understand microphones are very  
09:34:42 6 sensitive, and they may pick up whistling and  
09:34:44 7 private conversations and cellular interference.

09:34:49 8 Please turn off your cell phones or place  
09:34:51 9 them away from the microphones, as they may  
09:34:54 10 interfere with the audio. Audio and video recording  
09:34:57 11 will continue to take place unless all parties agree  
09:35:01 12 to go off of the record.

09:35:03 13 This is Disc 1, Volume 1 in the video  
09:35:06 14 deposition of Michael J. Wagner, taken by counsel  
09:35:10 15 for Defendants in the matter of Waymo LLC v. Uber  
09:35:16 16 Technologies. It's filed in the United States  
09:35:19 17 District Court, for the Northern District of  
09:35:21 18 California, Case No. 17-cv-00939-WHA.

09:35:29 19 This is being taken at Morrison &  
09:35:31 20 Foerster. They're at 425 Market Street in  
09:35:35 21 San Francisco. My name is Kevin Foor, and I am here  
09:35:40 22 with Mary Goff-Sharma, and we are from Veritext.  
09:35:45 23 I'm not related to any party nor am I financially  
09:35:49 24 interested in the outcome in any way.

09:35:52 25 Counsel and -- and all present in the

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12:08:16 23 Otto Trucking LLC. Do you know who Otto Trucking

12:08:18 24 is?

12:08:19 25 A I do.

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12:08:20 2 Q Who is Otto what's your understanding of

12:08:22 3 what Otto Trucking is?

12:08:23 4 A Well, I -- I believe it's a company that's

12:08:25 5 owned by -- principally owned by Mr. Levandowski and

12:08:32 6 Li or.

12:08:34 7 And it is in -- has signed an -- an

12:08:37 8 acquisition of purchase agreement with Uber where it

12:08:43 9 it's Uber's discretion to purchase that company

12:08:46 10 between now and sometime in November. And it is a

12:08:49 11 company that is focused on applying Li DAR technology

12:08:53 12 to trucks.

12:08:56 13 Q Do you know whether Otto Trucking has any

12:08:58 14 employees?

12:08:59 15 A Well, my understanding is they do not at

12:09:01 16 least from the last facts that I have.

12:09:04 17 Q Do you have any understanding of as to

12:09:04 18 whether Otto Trucking does any research and

12:09:07 19 development activities?

12:09:12 20 A I -- I don't know whether they do or not

12:09:16 21 I understand that Uber is advancing development

12:09:18 22 funds to them. So I -- I would think they do. But

12:09:22 23 whether that's done with actually being done by Uber

12:09:26 24 and not your client, I don't know.

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12:09:29 25 Q Okay. You're not offering any opinions in

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12:09:31 2 this case as to any damages caused to Waymo specific

12:09:36 3 to oath Otto Trucking; is that right?

12:09:38 4 A That's correct.

12:09:38 5 Q Okay. And so then your damages -- I'm  
12:09:44 6 going to walk through briefly -- not in the level of  
12:09:46 7 detail that Uber's counsel did -- but I just want to  
12:09:48 8 walk through your principal opinions in this case.

12:09:50 9 You have offered two unjust enrichment  
12:09:55 10 unjust enrichment calculations and a reasonable  
12:09:58 11 royalty measure, correct?

12:10:00 12 A That's fair.

12:10:01 13 Q Okay. The first unjust enrichment measure  
12:10:05 14 values the accelerated development to -- that Uber  
12:10:10 15 was able to achieve through the alleged  
12:10:13 16 misappropriation of these nine trade secrets, right?

12:10:16 17 A Yes.

12:10:17 18 Q And -- and your opinion -- that -- we'll  
12:10:20 19 call that your first unjust enrichment opinion.

12:10:24 20 That opinion is based upon internal Uber

12:10:28 21 documents showing some accelerated development,

12:10:31 22 correct?

12:10:32 23 A That's fair.

12:10:34 24 Q That opinion is not based upon any Otto

12:10:36 25 Trucking documents; is that right?

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12: 16: 07 8 that word -- the caveats you're referring to  
12: 16: 09 9 regarding the applicability of your unjust  
12: 16: 12 10 enrichment damage theories, those caveats are Uber  
12: 16: 17 11 acquires Otto Trucking and that Uber shares some of  
12: 16: 21 12 the technology it's developing using the allegedly  
12: 16: 25 13 misappropriated trade secrets with Otto Trucking; is  
12: 16: 28 14 that right?

12: 16: 28 15 A That's -- that's -- again, that's my  
12: 16: 30 16 conclusion -- or that would be my opinion as a  
12: 16: 33 17 damages expert.

12: 16: 33 18 Q If both of those assumptions are true,  
12: 16: 36 19 then your damages opinions -- your unjust enrichment  
12: 16: 39 20 damages opinions may have some applicability to Otto  
12: 16: 41 21 Trucking, correct?

12: 16: 44 22 MR. EISEMAN: Objection as to form.

12: 16: 44 23 A That's fair.

12: 16: 49 24 Q (BY MR. BERRY) You also have a reasonable  
12: 16: 53 25 royalty rate calculation. And that measures the

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12: 16: 55 2 amount that Uber would have agreed to pay Waymo in  
12: 16: 58 3 this hypothetical negotiation set in the --  
12: 17: 01 4 somewhere in the December 15 -- August -- between  
12: 17: 05 5 December '15 and August 2016 time period, right?

12: 17: 09 6 A Correct?

12: 17: 09 7 Q You didn't do any separate calculation of  
12: 17: 11 8 the amount that Otto Trucking would have agreed to  
12: 17: 15 9 pay Waymo at a hypothetical negotiation set during

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12: 17: 20 10 that same time period, correct?

12: 17: 22 11 A That is accurate.

12: 17: 23 12 Q Okay. And then for the reasonable royalty

12: 17: 25 13 calculation that you did, you start with a baseline

12: 17: 28 14 of Uber's unjust enrichment. And then you adjusted

12: 17: 32 15 upward based on some analysis you have done of

12: 17: 36 16 certain of the Georgia-Pacific factors. Namely 4,

12: 17: 38 17 5, 6, 8, and 11, correct?

12: 17: 42 18 A Those are the only ones that had any

12: 17: 45 19 impact on changing the number from the baseline.

12: 17: 47 20 That is correct.

12: 17: 48 21 Q And -- and Factor 5 -- this is addressed

12: 17: 52 22 in your report at paragraphs 399 to 401 -- that --

12: 17: 55 23 that factor deals with the commercial relationship

12: 17: 58 24 between Waymo and Uber and some documents that you

12: 18: 02 25 referred regarding the -- the potential competitive

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12: 18: 08 2 relationship between those two companies, right?

12: 18: 10 3 A Yes.

12: 18: 11 4 Q That analysis in Factor 5 is -- is

12: 18: 13 5 inapplicable to -- to my client Otto Trucking --

12: 18: 16 6 A Yeah --

12: 18: 16 7 Q -- right?

12: 18: 16 8 A -- as discussed in my report, that is

12: 18: 19 9 correct.

12: 18: 20 10 Q Right. And -- and Factor 8 deals with

12: 18: 25 11 expected future profitability. And you analyzed

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12: 20: 30 16 Q So as we sit here today based on the work  
12: 20: 33 17 you have done so far up to and including today, you  
12: 20: 36 18 don't have an opinion of what damages Waymo would be  
12: 20: 39 19 entitled to under that hypothetical verdict --  
12: 20: 41 20 MR. EI SEMAN: Objection.  
12: 20: 41 21 Q -- is that fair (talking over each other  
12: 20: 42 22 -- check \*)?  
12: 20: 43 23 MR. EI SEMAN: Objection as to form.  
12: 20: 43 24 A I do not.  
12: 20: 44 25 Q (BY MR. SCHUMAN) In -- in response to some

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12: 20: 50 2 of the questions you got from Uber's counsel, you --  
12: 20: 55 3 you mentioned that you personally spent  
12: 20: 58 4 approximately 64 hours total working on -- working  
12: 21: 01 5 on your opinions in this case. Obviously, your  
12: 21: 04 6 staff spent many more hours than that.  
12: 21: 06 7 Approximately what percentage of your  
12: 21: 09 8 64 hours, Mr. Wagner, did you spend focusing on  
12: 21: 14 9 calculating damages specific to my client, Otto  
12: 21: 16 10 Trucking?  
12: 21: 17 11 A Zero.  
12: 21: 25 12 Q Just bear with me a second.  
12: 21: 27 13 A But I could approximate -- it's exactly  
12: 21: 31 14 64.0 hours through September 15. And it's been 13.4  
12: 21: 39 15 hours since then before today  
12: 21: 39 16 Q I would --  
12: 21: 40 17 A -- between September 15 and today (talking  
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